

ARTICLES OF AGREEMENT
MAINTENANCE SUPPORT
PARKE COUNTY, INDIANA
2002/2003/2004

In an effort to emphasize our determination to
perform an exceptional service for your county,

Appraisal Research Corporation

is pleased to include the following

Unconditional Guarantee

Should you, for any reason, determine that any
component of our work product is deficient,

we will redo that segment to your
complete and undisputed satisfaction.

This MAINTENANCE SUPPORT AGREEMENT entered into by and between APPRAISAL RESEARCH CORPORATION, ("Consultant"), an corporation authorized to do business in the State of Indiana, having principal offices at Findlay, Ohio, and the Parke County Commissioners representing the PARKE COUNTY ASSESSOR ("Client") is made effective as of November 15, 2001.

1. **DEFINITIONS:** For the purposes of this Agreement, the definitions set forth in this Paragraph 1 shall apply to the respective bolded terms in quotations:
 - a. **"Agreement"** shall mean this Maintenance Agreement, including any Exhibits attached hereto.
 - b. **"Derivative Work"** shall mean work that is based upon one or more pre-existing works, such as a revision, modification, translation, abridgment, condensation, expansion, or any other form in which such a pre-existing work by be recast, transformed, or adapted, and that, if prepared without authorization by the owner of the pre-existing work, would constitute a copyright infringement.
 - c. **"Enhancement(s)"** shall mean computer program modifications or additions, other than Error Corrections, that may be integrated with the Licensed Programs or offered separately by Consultant and that improves its function, adds new functions, or substantially enhances its performance. Enhancements shall not include programs that have a value and utility separate from the use of the Consultant programs, and that, as a practical matter, may be priced and offered separately from the Licensed Programs.
 - d. **"Error"** shall mean a defect in the Licensed Programs which can with reasonable effort be recreated using a supported operating environment, that prevents the Licensed Programs from functioning in substantial conformity with the published specifications pertaining hereto.
 - e. **"Error Corrections"** shall mean computer software changes to correct an Error in the Licensed Programs that is in a form that allows its application to the Licensed Programs to establish conformity with the specifications for Licensed Programs.
 - f. **"Licensed Program(s)"** shall mean the computer software described in Exhibit A, attached hereto and incorporated by reference, including any extracts from such software, derivative works of such software, enhancements of such software, or collective work constituting such software (such as subsequent Releases) to the extent offered to Client under this Agreement or the License Agreement covering the described computer software.

- g. **"Normal Working Hours"** shall mean the hours between 8:00 A.M. and 5:00 P.M. on the days Monday through Friday of each week of the calendar year, excluding regularly scheduled holidays of the Consultant.
2. **TERM OF AGREEMENT:** This Agreement will become effective on the date indicated in the introductory paragraph of this Agreement, and will remain in effect for THIRTY-SIX (36) months from such effective date. This Agreement will be renewable on a yearly basis beginning January 1, 2004. This Agreement may be otherwise terminated only for cause as set forth in Section 7 of this Agreement entitled "Termination of Agreement."
3. **SUPPORT:** During the term of this Agreement, Consultant shall render the following services during Normal Business Hours in support of the Licensed Programs and Equipment:
- Telephone hot-line support, including consultation on the operation and utilization of the Licensed Programs. Client shall be responsible for all telephone equipment and communication charges related to such support; and
 - Upon Client promptly reporting and notifying Consultant in writing of Errors in the Licensed Programs and Client not modifying the Licensed Programs without Consultant's prior written consent, Consultant shall verify such Errors and, in accordance with the following schedule or such longer period as may be agreed to in writing by Client and Consultant, either notify Client that no such Errors exist or provide to Client for verified Errors, Error Corrections:

Severity	Client: Up/Down	Debility	Work Around	Correction
1	Down	High	No	2 business days after error is reported to Programmer
2	Up	High	No	5 business days after error is reported to Programmer
3	Up	High/Med	Yes	15 business days after error is reported to Programmer
4	Up	Low	Yes	By next version release

- Consultant support obligations do not include any data conversion or software development services. Consultant shall only be responsible for supporting Licensed Programs, which are no more than one version prior to the current version of the Licensed Programs.

4. **SUPPORT FEES:** Client shall pay Consultant for Error Correction and Enhancements support the annual sum of FIFTEEN THOUSAND SIX HUNDRED DOLLARS (\$15,600.00), payable in monthly installments of THIRTEEN HUNDRED DOLLARS (\$1,300.00) each. Three years after the date of the Client's final acceptance of the Licensed Programs, Consultant shall be entitled to increases in the support fees upon at least 10 days' prior written notice to Client.
5. **DATA ENTRY:** The consultant agrees to be responsible for conversion and data entry of the current information on the property record cards into the Consultant's software. The client agrees to make every possible effort to provide a download with file layout of the current real property information. Data entry shall be complete by August 1, 2002 provided data entry can begin by December 1, 2002.
6. **DATA ENTRY FEE:** The client shall pay Consultant a total of THREE DOLLARS PER PARCEL (\$3.00) for the total parcel count of the County for data entry services.
7. **PROPRIETARY RIGHTS AND CONFIDENTIALITY**
 - a. Consultant is the exclusive owner of Licensed Programs, Error Corrections, Enhancements, Derivative Works thereof and related documentation or maintains sufficient rights as a licensee of certain software incorporated into Licensed Programs to grant to Client the limited rights granted in this Agreement. Nothing in this Agreement shall be construed to grant Client any right, title or interest in the Licensed Programs, Error Corrections, Enhancements, Derivative Works thereof and related documentation except the limited right to use granted in this Agreement and any end-use license agreement with Consultant.
 - b. Client recognizes the validity of Consultant's copyrights and trade secrets. Client will cooperate in good faith to secure and preserve Consultant's right and title to the copyrights and trade secrets for Licensed Programs and related documentation, respectively, as if said products were its or their own products. No provision or clause in this Agreement shall be interpreted as an assignment or grant to Client of any right, title, or interest in or to copyrights, and trade secrets, all privileges pertaining thereto remaining the exclusive property of Consultant (or in some cases, of its subcontractors), except for the rights granted herein to Client to use the Licensed Programs and related documentation as specified under the terms of this Agreement. Client agrees upon termination of this Agreement to continue to protect Consultant's copyrights and trade secrets.
 - c. Client expressly agrees to retain in confidence, and to require its employees, representatives and agents to retain in confidence, all information, ideas, and concepts imparted to it by Consultant concerning the Licensed Programs. Client agrees to limit its use of any knowledge obtained from Consultant, to those activities covered under the terms of its end-user license agreement and this Agreement. Client's obligations under these provisions extend past the

termination of this Agreement to the earlier of such time as the information protected herein is in the Public Domain, or ten years following the termination of this Agreement.

8. **INDEPENDENT CONTRACTOR:** Consultant shall be an independent contractor, and this Agreement does not and is not intended to create in any way or manner or for any purpose whatsoever an employer-employee relationship or a principal-agent relationship. In its capacity as an independent contractor, Consultant agrees and represents, and Client agrees, as follows:

- a. Consultant has the right to perform services for others during the term of this Agreement.
- b. Consultant has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- c. Consultant has the right to perform the services required by this Agreement at any place or location and at such times as Consultant may determine and as possible under the terms of this Agreement.
- d. The services required by this Agreement shall be performed by Consultant, or Consultant's staff, and Client shall not be required to hire, supervise, or pay any assistants to help Consultant.
- e. Consultant is responsible for paying all ordinary and necessary expenses of its staff.
- f. Neither Consultant nor Consultant's staff shall be required to devote full-time to the performance of the services required by this Agreement.
- g. Client shall not provide any insurance coverage of any kind for Consultant or Consultant's staff.
- h. Consultant's agents or employees shall not be considered in any manner as employees of Client or have any rights to any benefits that Client grants its employees.
- i. Consultant shall not be considered or deemed to be an agent, employee, joint venture, or partner of Client.
- j. Consultant shall have no authority to contract for or bind Client in any manner and shall not represent itself as an agent of Client or as otherwise authorized to act for or on behalf of Client.

9. TERMINATION OF AGREEMENT

- a. Each party has the right to terminate this Agreement if the other party has materially breached any obligation herein and such breach remains uncured for a period of 30 days after notice thereof is sent to the other party.
- b. If at any time after commencement of the services required by this Agreement, Client shall, in its sole reasonable judgment, determine that such services are inadequate, unsatisfactory, or substantially not conforming to the descriptions, warranties, or representations contained in this Agreement, Client may terminate this Agreement upon 30 days' written notice to Consultant.
- c. Upon termination of this Agreement for any reason, each party shall be released from all obligations and liabilities to the other occurring or arising after the date of termination. However, any termination of this Agreement shall not relieve Client from the obligation to pay Consultant for services rendered prior to receipt of the notice of termination and for work performed or hours reserved for Client during the 30-day termination notice period.

10. RETURN OF MATERIALS: Upon termination of this Agreement, Client shall promptly return to Consultant all of Consultant's data, materials (including all materials embodying Trade Secrets), reports and other property (and all copies of same) held by the Client. Consultant shall promptly return any property of the Client's held by Consultant.

11. WARRANTIES AND REPRESENTATIONS: Consultant warrants and represents that:

- a. Consultant will not knowingly infringe upon any copyright, patent, trade secret or other property right of any former client, employer or third party in the performance of the services required by this Agreement.
- b. Consultant has not granted any rights or licenses to any intellectual property or technology that would conflict with Consultant's obligations under this Agreement.
- c. The warranties and representations above set forth in this Section 9 are the only warranties and representations made by consultant under this agreement. Consultant makes no other warranty or representation of any kind whatsoever, express or implied. Any and all implied warranties or merchantability and fitness for a particular purpose and expressly disclaimed and excluded by consultant.

12. LIMITATION ON CONSULTANT'S LIABILITY TO CLIENT

- a. In no event shall consultant be liable to you or any other person for any direct, indirect, or consequential or incidental damages (including damages for business

interruption, loss of business information or similar losses) due to breach by consultant of the limited warranty contained herein even if consultant has been advised of the possibility of such damages.

- b. The cumulative liability of Consultant to the Client for all claims related to the support services for the Licensed Programs provided under this Agreement, including any cause of action sounding in contract, tort, or strict liability, shall not exceed the total amount of all fees paid to Consultant by Client under this Agreement.
- c. Consultant shall not be liable for any claim or demand made against Client by any third party, except as provided in Section 9 of this Agreement entitled "Warranties and Representations," and the cumulative liability of Consultant to such third party for all such claims shall not exceed the total amount of all fees paid to Consultant by Client under this Agreement.
- d. Client shall indemnify Consultant against all claims, demands, and costs, including reasonable attorney fees, of defending any claim or demand by any third party, except as to the items contained in Section 9 of this Agreement entitled "Warranties and Representations," arising out of or in connection with Client's performance under this Agreement. Consultant shall promptly notify Client in writing of any such claim or demand and Client shall have the right to fully control the defense and any settlement of the claim or demand.

13. **EMPLOYMENT OF ASSISTANTS OR SUBCONTRACTORS:** Consultant may, at Consultant's own expense, employ such assistants or subcontractors, as Consultant deems necessary to perform the support services required by this Agreement. Client shall have the right, upon reasonable notice to Consultant, to reject any of Consultant's assistants or subcontractors whose qualifications in Client's good faith and reasonable judgment are insufficient for the satisfactory performance of the support services required by this Agreement.

14. **MEDIATION AND ARBITRATION:** Except for the right of Consultant to bring suit on an open account for simple moneys due Consultant, any dispute arising under this Agreement shall be resolved through a mediation-arbitration approach. The parties agree to select a mutually agreeable, neutral third party to help them mediate any dispute that arises under the terms of this Agreement. If the mediation is unsuccessful, the parties agree that the dispute shall be decided by binding arbitration under the rules of the American Arbitration Association. The decision of the arbitrators shall be final and binding on the parties and may be entered and enforced in any court of competent jurisdiction by either party. Costs and fees associated with the mediation shall be shared equally by the parties. The prevailing party in the arbitration proceedings shall be awarded reasonable attorney fees, expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings, unless the arbitrators shall for good cause otherwise determine.

15. TRAINING

The consultant shall include six (6) days of training on the system with the contract amount. Additional days shall be provided at a cost of FOUR HUNDRED NINETY FIVE DOLLARS (\$495.00) per day plus expenses.

16. GENERAL PROVISIONS

- a. This Agreement, together with any Exhibits attached hereto and incorporated by reference, is intended by the Consultant and Client to be the final expression of their agreement, and constitute the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements, oral or written, to the contrary heretofore made. This Agreement may be amended only in writing signed by an authorized representative of the party against whom enforcement of the modification is sought.
- b. In the event that any of the terms of this Agreement is or becomes or is declared to be invalid, unenforceable or void by any court or tribunal of competent jurisdiction, such term or terms shall be null and void and shall be deemed severed from this Agreement, and all the remaining terms of this Agreement shall remain in full force and effect.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.
- d. Client represents and acknowledges that Client is not relying on any representation or warranty from Consultant regarding support services, except as specifically set forth in this Agreement, including, but not limited to, any representation as to future product offerings.
- e. Client shall not assign, or otherwise transfer any of the obligations undertaken or rights granted under this Agreement without the prior written consent of Consultant. The parties to this Agreement agree that any assignment would increase materially the burden of risk imposed on Consultant by this Agreement and impair materially Consultant's chance of obtaining return performance.
- f. Any notices and other communications required or permitted under this agreement shall be in writing and shall be deemed given when delivered in person or sent by registered or certified mail, return receipt requested, with proper postage affixed, to the parties in the following manner:

If to Client:

Office of the Assessor of Parke County
ATTENTION: Hon. Marilyn Allen, Assessor
116 w. High St., #103
Rockville, Indiana 47872

If to Consultant:

Appraisal Research Corporation
ATTENTION: Richard H. Hoffman, President
101 East Sandusky Street
Findlay, Indiana 45840

IN WITNESS WHEREOF, Client and Consultant have caused this Agreement to be executed effective as of the day and year first above written.

PARKE COUNTY, INDIANA

James D. Nicholas
Commissioner

Date: 11-5-01

William L. Jeffers
Commissioner

Date: 11-5-2001

Patricia Leonard
Commissioner

Date: 11/5/01

ATTEST

Gloria K. Koch
Parke County Auditor

Date: Nov 5, 2001

APPRAISAL RESEARCH CORPORATION

Richard H. Hoffman
Richard H. Hoffman, ASA, CAE, MAI
President & CEO

**EXHIBIT A
TO
AGREEMENT
OF
MAINTENANCE SUPPORT
BETWEEN
APPRAISAL RESEARCH CORPORATION ("CONSULTANT")
AND
ASSESSOR OF PARKE COUNTY, INDIANA ("CLIENT")**

Consultant agrees to provide error-correction and support maintenance services to the Client under the terms of this Agreement for the following listed Licensed Programs:

- Computer Assisted Mass Appraisal ("CAMA") – running on a Personal Computer based network – and other assessment software necessary to electronically download data to the State Tax Board.